

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, DIBRUGARH, ASSAM**

Present:- **Smti. Sanskrita Khanikar, A.J.S.**

Judicial Magistrate First Class, Dibrugarh

Date of Judgment:-24-02-2022

G.R.Case No.2077/2013

(F.I.R. No.874/2013 dated 13/07/2013

Dibrugarh P.S.Case No.874/2013 under section 380 IPC)

Complainant:	State of Assam
Represented By	Learned Smti. Lakshmi Mohan
Accused	Sri Raja Ahmed S/O - Late Jewel Ahmed R/O - Loharpatty P.S. - Dibrugarh Dist - Dibrugarh, Assam
Represented By	Learned Sri Toushik Ahmed

Date of Offence	12-07-2013
Date of FIR	13-07-2013
Date of Charge-sheet	22-10-2013
Date of Charge Framed	03-04-2018

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Date of Commencement of evidence	16-05-2018, 25-06-2018, 07-08-2018, 08-10-2021 & 20-12-2021
Date of recording Statement Defence	21-02-2022
Date of Argument	24-02-2022
Date on which Judgment is reserved	24-02-2022
Date of Judgment	24-02-2022
Date of Sentencing Order,if any	Nil

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Explained with sections	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
Accused No.1	Sri Raja Ahmed	Nil	03-04 2018	380 IPC	Acquitted	Nil	Nil

J U D G M E N T

1. The prosecution case as stated in the F.I.R. dated 12-07-2013 lodged by the informant, namely, Smti. Rakhi Dastidar, is that on the same day, while she was employed at the establishment of the Deputy Commissioner, she went to the office canteen for lunch with her colleagues. When she came back to her table,

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she found that her office bag had been stolen from the CFC Branch. Her office bag was brown in colour and contained her post office saving passbook, four gold rings, house keys, umbrella, the i/d card of her husband Sri Himanga Phukan, one mobile handset etc. As such, she lodged the F.I.R. at Milan Nagar Police Outpost.

2. A case was registered at Dibrugarh P.S. subsequent to the lodging of this F.I.R. Upon completion of investigation, the police submitted charge-sheet against the accused person, namely, Sri Raja Ahmed for commission of offence u/sec 380 of the Indian Penal Code (hereinafter referred to as I.P.C.).

3. The accused person stood for trial. Copies of the relevant documents were furnished to the accused person as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). Upon perusal of the charge-sheet and the materials on record, prima facie grounds were found to presume that the accused person committed offence u/se 380 IPC and accordingly, charge u/sec 380 IPC was framed, read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution in order to prove its case and to nail the guilt of the accused person has examined as many as 06 (six) witnesses, namely, Smti. Bhabani Gogoi as PW-1, Miss Muslim Ara Begum as PW-2, Sri Simanta Khanikar as

PW-3, Sri Prasenjit Hazarika as PW-4, Smti. Rakhi Dastidar being the informant as PW-5 and Sri Banikanta Gogoi as PW-6.

The prosecution also took aid of 03 (three) documents being the ejahar as Exhibit 1, the sketch-map of the place of occurrence as Exhibit 2 and the charge-sheet as Exhibit 3.

After recording the prosecution evidence, the statements of the accused persons were recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused persons claimed innocence. The defence adduced no evidence.

5. I have heard the arguments from both sides and perused the entire evidence on record.

6. THE POINT FOR DETERMINATION

Whether the accused, namely, Sri Raja Ahmed, on 12-07-2013, stole the office bag of the informant containing her belongings from the CFC Branch, Deputy Commisioner Establishment, Dibrugarh and thereby committed an offence punishable u/sec 380 of the IPC?

DISCUSSION, DECISION AND REASONS THEREOF

7. PW-1 deposed in his evidence that the accused person is not known to her and the informant is known to her. The incident occurred in 2913. She does not much

about the incident except that the informant lodged a case regarding the theft of her office bag. her statement was recorded by the police.

During her cross-examination, she stated that she knows nothing about the incident and came to know about the instant case only when she received the summons of the Court.

8. PW-2 deposed in her evidence that the informant is her colleague but that the accused is not known to her. The incident occurred in 2013. When she was working at the DC Office, Dibrugarh, she came to know on a working day that the informant's office bag had been stolen. She does not know anything else about the incident.

During her cross-examination, she stated that she does not anything much about the incident at all. Their working establishment used to be crowded with people during the work hours.

9. PW-3 deposed in his evidence that the informant was her colleague but that the accused is not known to her. The incident occurred in the year 2013. On the date of the occurrence, during the lunch time he had gone to the canteen. When he came back, he found out from the informant/PW-5 that she was unable to find her office bag after returning from the canteen.

During his cross-examination, he stated that he does not know much about the incident at all and that he came to know about it from the informant/PW-5. The CFC Branch where the informant/PW-5 was working is a busy branch and is generally crowded with people during the working hours.

10. PW-4 deposed in his evidence that the informant was his colleague at the DC Office, Dibrugarh. The accused person is not known to him. The incident occurred in 2013. On the date of the occurrence, he had gone to the canteen during lunch time. When he came back from the canteen, he found out from the informant that her office bag had been lost.

During his cross-examination, he stated that he does not know much about the incident at all. He could not tell when and how exactly the incident occurred.

11. PW-5 being the informant, deposed in her evidence that the accused is not known to her. She had instituted the instant case in 2013 when she was working at the Certificate Branch of DC Office, Dibrugarh. On the date of the occurrence, she had gone to the canteen during lunch time. After coming back from the canteen, she was unable to find her handbag in the Certificate Branch. It contained four finger rings out of which two were of gold and the other two were of silver, house keys, her mobile handset and her post-office saving passbook. She then

went with her husband to lodge an F.I.R. reporting the matter to the police. She proved Exhibit 1 as the F.I.R. lodged by her by identifying Exhibit 1(1) as her signature therein.

During her cross-examination, she stated that she does not know who had stolen her handbag. She also stated that she does not want to proceed any further in the instant case and that she would have no objection if the accused is acquitted due to lack of evidence. She does not remember if her statement had been recorded by the police.

12. PW-6 being the I.O. deposed in his evidence that on 12-07-2013, he was posted at Milan Nagar O.P. as ASI under Dibrugarh Police. On the same day, the informant, namely, Smti. Rakhi Dastidar, filed a written ejahar at the O.P. It was entered as GD NO. 270/13 of Milan Nagar O.P. and PW-6 was entrusted with the investigation of the case. The main copy of the ejahar was sent to Dibrugarh P.S. for investigation. He recorded the statements of the informant on the same date at the P.S. itself. The informant gave him the IMEI no. of her mobile handset which was in her office bag. The IMEI No. was 354775029380218 and the same was given to the I/C. The I/C forwarded this no. to the SP, Dibrugarh for tracing out the SDR and the present tower location along with a written prayer. On 15-07-2013, he visited the place of

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occurrence and drew a rough sketch-map of it. He proved Exhibit 2 as the sketch-map by identifying Exhibit 2(1) as his signature therein. In the meantime, on 13-07-2013, the original ejahar was registered at Dibrugarh P.S. as Dibrugarh P.S. Case No. 874/2013 u/sec 380 IPC. He also recorded the statements of the witnesses at the place of occurrence. The I/C of the O.P. had handed him a phone no. in connection with the above IMEI no. And through this phone number, they were able to trace out one Sri Raja Ahmed, S/O Sri Jewel Ahmed, R/O Loharpatty Ward No. 10. On making several attempts at tracing out the accused in the said address at Loharpatty, they were unable to trace out the accused. PW-6 then completed the investigation and showed the accused as an absconder. After finding sufficient proof that the stolen mobile handset of the informant was used by the accused, ASI Sri Nitya Sonowal submitted the charge-sheet against the accused Sri Raja Ahmed u/sec 380 IPC. He proved Exhibit 3 as the charge-sheet by identifying Exhibit 3(1) as the signature of Sri Nitya Sonowal which is known to him. On the prayer of the I/C, Sri Ranjit Rajkhowa, Sri Nitya Sonowal Had collected the SDR report. Exhibit 4 is the said SDR Report of IMEI No. 35477502938218.

During his cross-examination, he stated that the name of the accused is not mentioned in the ejahar. The informant did not mention the said IMEI No. in her statement to the

police. He did not collect the invoice of the stolen mobile. He did not record the statements of the Police who were at the entrance of the DC Office, Dibrugarh. He did not seize any articles in connection with the instant case. The IMEI no. was given by the informant to the I/C and no certificate was collected from the service provider in connection with the said IMEI No. He did not name the secret sources who assisted the police in the investigation of the case. He also did not record the statements of these secret sources. The SDR report was not collected by him. He did not see any seal or signature at the SDR report. He simply traced the address of the accused but despite several attempts, the accused could not be traced out by him. He denied the defence suggestion that he did not investigate the matter properly and that the charge-sheet was filed wrongly against the accused person.

13. I have heard the arguments of the learned Asst. Public Prosecutor representing the State and the learned defence counsel representing the accused person.

14. Now, the stage has been set to appreciate the evidence on record in the light of the essential ingredients of the offence alleged to have been committed by the accused person.

15. In order to establish the offence u/sec 380 IPC, the prosecution has to satisfy the following ingredients in the act of the accused:

- i) The accused committed theft
- ii) That such theft was committed in any building, tent or vessel; and
- iii) That such building, tent or vessel was used as a human dwelling or used for the custody of property

At the onset, it is pertinent to note that there are no eye-witnesses in the instant case. None of the PWs have seen the accused person committing the theft in the place of occurrence and none of them deposed anything regarding the involvement of the accused person in any manner with the instant case. As per the testimony of the I.O., the phone no. of the informant's mobile handset which was inside the stolen bag was traced out through the IMEI No., SDR and tower location to the accused but yet the said stolen office bag of the informant/PW-5 was never recovered or seized by the I.O. Infact the I.O. did not even collect the invoice of the informant's mobile handset which was in the stolen bag. It is quite apparent from his testimony in the Court that there were several lapses in the investigation of the instant case. Resultantly, it transpires that the act of the accused person is bereft of the essential elements of the offence u/sec 380 IPC.

It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the case of the prosecution and there is ample scope of reasonable doubt as to the factum of the occurrence alleged. In the absence of any cogent evidence, I am not inclined to hold the accused person guilty u/sec 380 IPC.

16. Situated thus, I am constrained to hold that the prosecution has failed to establish the guilt of the accused person, namely, Sri Raja Ahmed u/sec 380 IPC beyond all reasonable doubt. As such, the point of determination is answered in the negative in favour of the above named accused person.

ORDER

17. In view of the decision made above, the accused, namely, Sri Raja Ahmed is acquitted of the charge of the offence under section 380 IPC and set at liberty forthwith.

His bail bond shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

The case is disposed of on contest.

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Given under my hand and the seal of this Court on this
24th day of February, 2021 at Dibrugarh.

Typed by: Self

Sanskrita Khanikar

Judicial Magistrate First Class
Dibrugarh

APPENDIX

**LIST OF PROSECUTION /DEFENCE /COURT
WITNESSES**

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smti. Bhabani Gogoi	Other Witness
PW2	Miss Muslim Ara Begum	Other Witness
PW3	Sri Simanta Khanikar	Other Witness
PW4	Sri Prasenjit Hazarika	Other Witness
PW5	Smti. Rakhi Dastidar	Informant
PW6	Sri Banikanta Gogoi	Other Witness

B. Defence Witnesses,if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Nil	Nil
DW2	Nil	Nil

C. Court Witnesses,if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	Nil	Nil
CW2	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit -1	The Ejahar
2	Exhibit -2	The sketch-map of the place of occurrence
3	Exhibit -3	The charge-sheet

B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW1	Nil
2	Exhibit D-2/DW2	Nil

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	Nil
2	Exhibit C-2/CW2	Nil

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	MO1	Nil
2	MO2	Nil

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh